IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

**APPEAL NO. 704 OF 2006**
IN
COMPANY APPLICATION NO. 32 OF 2006
IN
COMPANY PETITION NO. 166 OF 2002

The Board of Trustees of the
Port of Bombay .. Appellants.

V/s.

1. Official Liquidator, High Court, .. Respondents.
Bombay, Liquidator of Modi Stones
Limited and another.

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Mr. N.H.Seervai, Sr.Counsel with U.J.Makhija i/by M/s. Mulla and Mulla for the Appellants.

Mr.S.H.Doctor, Sr.Counsel with B.B.Parekh and A.W.Ansari for Respondent No.2.

Mr.S.Ramakantha, Dy.Official Liquidator, present.

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**CORAM : R.M.LODHA & S.A.BOBDE,JJ.**

**DATED : 22nd SEPTEMBER, 2006.**

**P.C.:**

. We heard Mr.N.H.Seervai, senior counsel for the Appellants and Mr. S.H.Doctor, senior counsel for the Respondent No.2.

2. The Official liquidator submitted the report before the learned company Judge on 30th January, 2006. The said report mentions that the valuation of the fixed assets was got done from M/s. K.N.Balakrishnan, the

Valuer. The valuation report of the valuer did not include - (one) the land admeasuring about 70,770 sq.mtrs. and (two) the RCC structure of office block, canteen, toilets, small toilets block etc.. The valuation report mentions in unequivocal terms that the M.S.Structure, main factory structure, Secondary factory structure and non-manufacturing structure has been included in the term "M.S.Structure". In other words, the value of the main factory structure, Secondary factory structure and non-manufacturing structure has been included in Mild Steel Structure (M.S. Structure).

3. The summary of the fixed assets in the valuation report reads thus :-

K.N.Balakrishnan
Govt.Regd.Valuer
Lic.No.Cat-I/313 of 1988
Panel Valuer:Official
Liquidator, Mumbai
High Court.

7,Vishwa Bhavan,
7th Cross Road,
Chembur,
Mumbai-400071
Phone:55756038/
25273012.

Ref.No.OL/HC/M/2005/017 31st Dec. 2005

SUMMARY OF FIXED ASSETS

| Sr. No. | Description | Value (Rs.) |
|---|---|---|
| 1. | Main Factory Structure | 3,01,89,840/- |

| | | |
|---|---|---|
| | 503164 sq.ft. x Rs.60/- | |
| 2. | Other Structures<br>41584 sq.ft. x Rs.40/- | 16,63,360/- |
| 3. | Main Plant & Machinery | 1,50,00,000/- |
| 4. | Other Plant & Machinery | 1,20,00,000/- |
| 5. | Long Term Spare Parts | 30,00,000/- |
| 6. | Furniture & Fixture | 30,00,000/- |
| 7. | Vehicles | 1,00,000/- |
| 8. | Electrical | 60,00,000/- |
| 9. | Scrap Material | 5,00,000/- |
| | | 7,14,53,200/- |

Rupees Seven crores Fourteen Lakhs Fifty three thousand Two hundred only.

(K.N.Balakrishnan)
Govt.Regd.Valuer.

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4. Based on the said report, the company Judge passed the order on 24th of March, 2006, ordering sale of the fixed assets (moveables and other assets) that included movables, plant and machinery and factory shed. The sale was confirmed in favour of the present Respondent No.2. It is pertinent to note that as per the valuation report, the valuation of the fixed assets was fixed at Rs.7,14,53,200/- (Rupees Seven crores

fourteen lakhs fifty three thousand two hundred only). The sale in favour of the Respondent No.2 was confirmed for Rs.8,65,00,000/- (Rupees Eight crores sixty-five lakhs only). Thereafter, it appears that the official liquidator submitted the report on 6th June, 2006, which came up before the learned company Judge on 8th of June,2006. The learned company Judge has observed that upto that stage there was no issue about the subject matter of sale pursuant to the order dated 24th March, 2006. The sale was of movables, plant and machinery and the factory shed and that the order dated 24th March, 2006 proceeds on this basis. The learned company Judge further observed that what was excluded from the sale was the land and the RCC structures.

5. The thrust of the contention on behalf of the Appellants is that the factory shed is RCC structure and the RCC structure was excluded by the order dated 24th of March, 2006 from sale and, therefore, the sale of factory shed in favour of Respondent No.2 must not be given cognizance and that the Appellants are entitled to the land and the factory shed.

6. We are afraid, the contention of the Appellants is wholly misconceived and misplaced. When the order of sale was made by the learned company Judge on 24th of

March, 2006, which was surely on the basis of the valuation report dated 31st December, 2005, it was clear to all the parties concerned that what was to be sold. The sale was of fixed assets which included factory shed and what was excluded was the land admeasuring 70,770 sq.mtrs. and the RCC structure of office block, canteen, toilets, small toilets block etc.. The learned company Judge is right, thus, in holding that the RCC structure that was excluded from sale was the RCC structure comprising of office block, canteen, toilets, small toilets block etc., and that the factory shed was not excluded; it was part of the sale effected by the order dated 24th March, 2006. It is pertinent to notice that neither the order dated 24th of March, 2006, whereby the learned company Judge ordered the sale of movables, plant and machinery and factory shed nor the order dated 5th May, 2006, whereby the sale in favour of the Respondent No.2 was confirmed, have been challenged by the Appellants and the said orders have attained finality.

7. We are thus satisfied that the impugned order does not call for any interference. The appeal is dismissed in limine.

(R.M.LODHA,J)

(S.A.BOBDE,J)

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